

Remarks/Arguments

Claims 1-28 were in the application as last examined. By this amendment, claims 1, 8, 9, and 24 have been amended. The foregoing amendments are made to undo the previous amendments that were entered following the interview of July 26, 2004. In light of the present rejections, it is respectfully believed that the earlier amendments were fruitless and unnecessary. It is respectfully submitted that no new matter is added to the application by these amendments. Further consideration and examination are respectfully requested.

Claim rejections under 35 U.S.C. §103(a)

Claims 1-4, 6, 8-11, 14, 21, 22, 24, and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,449,958 to Foye in view of U.S. Patent No. 3,285,455 to Pewitt. The rejection is respectfully traversed.

Foye and Pewitt are not properly combinable; there is no suggestion or teaching or motivation for making such an alleged combination. Rather, the Examiner is using impermissible hindsight reconstruction to craft the obviousness rejections in this case.

The Examiner states, "Foye discloses the claimed invention except for the beverage container support being located within the chamber." (Action dtd. 08/06/2004, p.2) In the preceding office action, the Examiner had stated, "Foye discloses the claimed invention except for the container support configured to support beverage containers having different vertical heights and different cross-sectional area sizes." (Action dtd. 16/23/2004, p.2) Yet the only difference in the claims examined in the earlier office action and the present office action was the phrase "within the chamber." The Examiner's assertions about Foye simply cannot be. Perhaps the Examiner should have combined Foye and Adkins (as in the preceding action) with Pewitt in the present action. In any event, this parsing of separate elements in the claims evinces a mode of searching for individual elements in the prior art and then rendering combinations without regard for the references' teaching, suggestions, or motivation for making the alleged combinations.

Applicants appreciate the Examiner's suggestion that reciting the support as pivotally movable would define over the art of record. It will be understood, however, that the support in

the present invention includes the recesses at the bottom of the chamber, which are not pivotable. Nevertheless the claimed combination remains patentable as hereinafter discussed. Moreover, the suggested limitation would render the claims closer to those calling for the movable plate (claims 3, 10, 15, and 28) many of which the examiner now finds unpatentable after having earlier found them allowable or allowed.

In truth, Foye '958 discloses a beverage cooling apparatus that includes a housing 12 and a container 30 extending into the housing that is sized to releasably and fittedly receive a cylindrical can or cup-type container (col. 4, ll. 51-53). A thermoelectric device 67, a fan 68, and heat sinks 65, 66 are provided to cool a beverage can or cup disposed in the housing (col. 6, ll. 37-39) or in the container 30 (col. 5, line 27 et seq.). A securing means 40 releasably secures a cylindrical can in the container 30 (Foye col. 4, ll. 53-54).

Pewitt '455 discloses an insulated coaster A for beverage containers that includes a plastic rim B that has a movable flange 3 extending inwardly from the rim B (col. 1, ll. 9-14). The leading edge 4 of the flange 3 bears uniformly against a beverage container to hold it in place (col. 2, ll. 38-41).

With respect to claim 1, Foye '958 does *not* disclose a beverage container support configured to support beverage containers having different vertical heights and different cross-sectional areas. Applicants intend the term "configured" in its ordinary sense of "designed, arranged, set up, or shaped with a view to a specific application or use." *The American Heritage Dictionary of the English language, Fourth Edition, Houghton Mifflin Company*. Applicants also intend the term "support" in its ordinary sense of "holding in position so as to keep from falling, sinking, or slipping." *ibid*. In other words, the container support of claim 1 has a design or an arrangement or set up or shape *specifically* to hold containers having different vertical heights and different cross-sectional areas in position so they do not fall, sink or slip.

It may be helpful to recognize that all of the references cited by the Examiner show mechanisms for flexibly gripping a beverage container sitting in a larger vessel. Applicants' beverage container support (or resizing element) does not flexibly grip the beverage container. Whichever embodiment one chooses to use, Applicants' beverage container support (or resizing element) specifically supports a beverage container. The container 30 of Foye '958 can certainly

“hold” a beverage container that is smaller in cross-section and taller in height as the Examiner previously asserted. But it is just as certainly *not* designed or arranged or set up or shaped *specifically* to support containers having different vertical heights and different cross-sectional areas *in position*. A smaller beverage container as contemplated by the Examiner can slip or fall within the container 30 because the container 30 is not configured to support a beverage container of any size other than what fits snugly within it or within the securing means 40.

Indeed, the container 30 is sized to fittedly receive a can or a cup (see col. 4, ll. 51-53), but there is no teaching or suggestion of any means to fittedly receive cans or cups having different cross-sectional areas and heights. A can or cup that is fittedly received will be “supported” in that it is held in position against falling, slipping, etc. But a can or cup of smaller dimension will not be supported because it is subject to slipping, falling, etc. and spilling its contents within the container 30. Pewitt adds nothing more to the alleged combination. Pewitt discloses essentially the same type of securing means as does Foye in Figs. 3 and 4, except that inwardly extending flange of Pewitt is spaced from the top edge of the chamber.

With respect to claims 2 and 4, nothing in Foye or Pewitt teaches or suggests multiple recesses configured to receive different sized beverage container bottoms. With respect to claim 3, nothing in Foye or Pewitt teaches or suggests a movable plate having at least one opening to receive a beverage container. Claim 6 depends from claim 1 and is patentable for the same reasons as claim 1. Claim 8 is likewise patentable for the same reasons claim 1 is patentable. Claims 9 and 11 are also patentable for the same reasons that claims 2 and 4 are patentable. Claim 10 is patentable for the same reason that claim 3 is patentable. Claim 14 depends from claim 8 and is patentable for the same reason as claim 8.

Claim 21 requires a movable plate and was heretofore deemed allowed. It is believed that claim 21 was rejected in error. In any event, a movable plate is not found in either cited reference. Claim 24 requires the resizing element to be within the chamber. Neither reference teaches or suggests this concept. The flange 3 of Pewitt is not a resizing element. Claim 28 also describes the movable plate, a concept previously thought to be allowable in this combination.

Applicants acknowledge with thanks the Examiner’s determination of the allowability of claims 5, 7, 12-13, and 25-27, and the allowance of claims 15-20, 22, and 23. Nevertheless, it is

respectfully submitted that all of the claims in the application are allowable over the prior art of record. Notification of allowability is respectfully requested.

If there are any questions regarding this matter, please contact the attorney of record.

Respectfully submitted,

CAROLYN SLONE ET AL.

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By: 

Joel E. Bair, Reg. No. 33,356

Mark A. Davis, Reg. No. 37,118

MCGARRY BAIR PC

171 Monroe Avenue, NW, Suite 600

Grand Rapids, Michigan 49503

616-742-3500

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